

EXHIBIT B

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, MARIA NGUYEN,
and WILLIAM BYATT, individually and on
behalf of all similarly situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-LHK

**DEFENDANT'S RESPONSES AND
OBJECTIONS TO PLAINTIFFS' FIRST
SET OF REQUESTS FOR PRODUCTION
(NOS. 1-19)**

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1 Pursuant to the Federal Rules of Civil Procedure 26 and 34, Defendant Google LLC
2 (“Google”) hereby responds and objects to Plaintiffs’ First Set of Requests For Production of
3 Documents (Nos. 1-19). These objections and responses are made solely for the purpose of and in
4 relation to this action, and any production in response will be subject to the Protective Order
5 governing this case. In addition, the objections and responses set forth in this document are based
6 on Google’s knowledge, investigations, and analysis to date. As discovery proceeds, Google may
7 become aware of additional facts or evidence and its analysis of the case may change. Google
8 reserves all rights to supplement and amend its objections and responses accordingly.

GENERAL OBJECTIONS

9
10 The following objections apply to each and every request for production propounded by
11 Plaintiffs and are incorporated into each of the specific objections by reference as if set forth fully
12 therein:

13 1. Google objects to Plaintiffs’ Definition Nos. 1-7, 9-11 and Instruction Nos. 1-7 to
14 the extent that they seek or purport to require the identification of “any,” “all,” “each,” or “every”
15 document, communication, product, person, circumstance, company, entity, fact, or other thing
16 regarding or relating to a particular subject, as unduly burdensome, overbroad, and not proportional
17 to the needs of the case.

18 2. Google objects to Plaintiffs’ definitions of GOOGLE, YOU, and YOUR and
19 Instruction No. 6 to the extent that they seek to require Google to produce or otherwise analyze any
20 document or other information that is not within the possession, custody, or control of Google.
21 Google further objects to these definitions and instructions to the extent that they purport to impute
22 knowledge of unspecified or unknown parties or persons to Google. Google further objects to these
23 definitions as overly broad, vague, and ambiguous to the extent they purport to include entities other
24 than Google, which is the only named defendant in the present action. Google further objects to
25 these definitions and instructions to the extent that they include Google’s attorneys and, therefore,
26 cause requests using “Google,” “Google LLC,” “You,” and “Your” to improperly seek information
27 protected by the attorney-client privilege, the work product doctrine, the common interest privilege
28 and/or any other applicable privileges or immunities.

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1 3. Google objects to Plaintiffs' definitions of COMMUNICATION, DOCUMENT, and
2 DOCUMENTS and Instruction No. 4 to the extent they conflict with the provisions of the ESI Order
3 (ECF No. 80) pertaining to the search and production of documents. Google further objects to each
4 Request to the extent it requires Google to search for electronically stored information in a manner
5 that is inconsistent with the agreements reached in the parties' ESI negotiations.

6 4. Google objects to Plaintiffs' definition of PERSONS as overly broad and unduly
7 burdensome in that it purports to include non-human entities, such as "firm, association,
8 organization, partnership, business, trust, corporation, or public entity," and including a business
9 entity's "predecessors, if any (INCLUDING any pre-existing PERSON that at any time became part
10 of that entity after merger or acquisition), successors, parents divisions, subsidiaries, affiliates,
11 franchisors and franchisees, and any other PERSON acting for or on behalf of them."

12 5. Google objects to Plaintiffs' definition of IDENTIFY and IDENTITY to the extent
13 that it calls for information protected from discovery by any evidentiary privilege, including without
14 limitation the attorney-client privilege, the work product doctrine, the common interest privilege, or
15 other applicable privileges or immunities recognized by law. Inadvertent disclosure of any such
16 information shall not be deemed a waiver of any privilege or immunity. Google also objects to
17 Plaintiffs' definition of "Identify" and Instruction No. 5 to the extent that they seek to require Google
18 to identify privileged communications or documents in a manner more detailed than required by the
19 Federal Rules of Civil Procedure. Google further objects to Plaintiffs' definition of "Identify" as
20 unduly burdensome in that it lists onerous requirements in identifying a person, document,
21 communication, agreement, or matter.

22 6. Google objects to Plaintiffs' definition of REGULATORS as overly broad and
23 unduly burdensome in that it purports to include "all government agencies and regulators that have
24 requested documents or information from Google and/or initiated any investigation or action
25 concerning Google's data collection practices and disclosures," "any written responses," and
26 "privilege logs submitted by Google."

27 7. Google objects to Plaintiffs' definitions of INCLUDE, INCLUDING,
28 CONCERNING, RELATE, and RELATING TO to the extent that they propose to alter the plain

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1 meaning or scope of any specific request and to the extent that such alteration renders the request
 2 vague, ambiguous, and overbroad.

3 8. Google objects to Plaintiffs' Definitions, Instructions, and Requests to the extent that
 4 they seek information and/or records that are not reasonably accessible and whose inclusion is not
 5 proportional to the needs of the case.

6 9. Google objects to Plaintiffs' Definitions, Instructions, and Requests to the extent that
 7 they conflict with or encompass information and/or records falling outside the scope of discovery
 8 under the Federal Rules of Civil Procedure, the local rules of the Northern District of California (the
 9 "Civil Local Rules"), or any discovery orders governing this case.

10 10. Google objects to the undefined use of the term "data" to the extent that it is
 11 inaccurate and subject to multiple interpretations; renders the Requests vague, ambiguous, overly
 12 broad and unduly burdensome; calls for information not within Google's possession, custody or
 13 control; and seeks, or may be construed to seek, to impose obligations inconsistent with the Federal
 14 Rules of Civil Procedure, the Civil Local Rules, and/or other applicable law. For purposes of these
 15 Responses and Objections, Google shall construe the term "data" to refer to information processed
 16 or stored by a computer.

17 11. Google's responses to these requests are made without waiving or intending to
 18 waive, but rather, to the contrary, by preserving and intending to preserve:

- 19 a. All questions as to the competence, relevance, materiality, and admissibility
 20 as evidence for any purpose of the information or documents, or the subject
 21 matter thereof, in any aspect of this action or any other court action or judicial
 22 or administrative proceeding or investigation;
- 23 b. The right to object on any ground to the use of any such information or
 24 documents, or the subject matter thereof, in any aspect of this action or any
 25 other court action or judicial or administrative proceeding or investigation;
- 26 c. The right to object at any time in connection with any further response to this
 27 or any other request for information or production of documents; and
- 28 d. The right at any time to supplement its responses.

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1 12. In offering to produce various types of documents, information, or things, Google
2 makes no representation that any such documents, information, or things exist or are actually known
3 (or not known) to exist.

4 13. Plaintiffs do not specify the temporal scope of their requests. In agreeing to produce
5 documents, Google will produce documents within the purported Class Period (i.e., June 1, 2016 to
6 the present).

7 14. Google has not completed its investigation or discovery in this litigation. Google's
8 Responses and Objections to Plaintiffs' First Set of Requests For Production of Documents (Nos.
9 1-19) are based upon the information presently known to Google. Google anticipates that future
10 discovery, independent investigation, or analysis will supply additional facts and add meaning to
11 known facts, as well as establish new factual conclusions and legal contentions, all of which may
12 lead to additions to, changes in, and variations from the responses set forth herein. Google reserves
13 the right to modify, supplement, withdraw, or otherwise alter its responses to these requests in
14 accordance with the Federal Rules of Civil Procedure, the Civil Local Rules, or any discovery orders
15 governing this case.

16 15. For each request where Google states that it will produce documents or information,
17 the production will occur on a rolling basis until the close of fact discovery. Google is unable to
18 produce documents on October 30, 2020 because, among other things, the parties have not yet
19 resolved all outstanding disputes concerning the ESI Protocol.

20 **OBJECTIONS AND RESPONSES TO REQUESTS FOR PRODUCTION**

21 Subject to the foregoing objections, Google objects and responds to Plaintiffs' requests as
22 follows:

23 **REQUEST FOR PRODUCTION NO. 1:**

24 Documents Google produced, provided, or otherwise disclosed to Regulators in connection
25 with any request, investigation, or action concerning Google's data collection practices and
26 disclosures.

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CONFIDENTIAL**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

Google incorporates its General Objections as if set forth fully herein. Google further objects to this request as vague and ambiguous as to the meaning of the phrase “concerning Google’s data collection practices and disclosures,” which is neither self-evident nor defined. Google further objects because Plaintiffs’ definition of “Regulators” is overbroad, as it encompasses “all government agencies and regulators that have requested documents or information from Google and/or initiated any investigation or action concerning Google’s data collection practices and disclosures,” including the Department of Justice, the Federal Trade Commission, the Arizona Attorney General, the Texas Attorney General, the California Attorney General, the Australian Competition & Consumer Commission, and the Commission Nationale de l’Informatique et des Libertés, and therefore makes this request unduly burdensome. Google further objects to this request as overly broad and unduly burdensome because the request seeks documents “in connection with any request, investigation, or action concerning,” broadly, “Google’s data collection practices and disclosures.” Google further objects to this request as overly broad and unduly burdensome because the request is not limited in scope and encompasses matters that have no relation to Plaintiffs’ central allegations regarding private browsing mode. The fact that Google produced certain documents in other cases does not necessarily make them discoverable in this case. As worded, this request is improper and in violation of Federal Rule of Civil Procedure 34(b)(1)(A), which requires that the propounding party “describe with reasonable particularity each item or category of items to be inspected.” Plaintiffs’ request for cloned discovery is highly likely to encompass documents that are both irrelevant and immaterial to the claims and defenses in this case. Google would have to review the cloned discovery and determine whether there are any additional privilege or confidentiality issues in producing them to plaintiffs (as opposed to government agencies). Google further objects to this request because Plaintiffs define “Documents” to include “any written responses and privilege logs submitted by Google to the Regulators,” which are not relevant to any party’s claim or defense in this case. As such, the request is not proportional to the needs of the case, and the burden of the proposed discovery outweighs any likely benefit. Google further objects to this request because it would allow Plaintiffs to bypass the limitations on the scope of discovery

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1 established by the Federal Rules. For these reasons, Google will not produce documents in response
2 to this request.

REQUEST FOR PRODUCTION NO. 2:

4 Unredacted versions of the filings (including exhibits and attachments) and all discovery
5 from *State of Arizona ex rel. Mark Brnovich, Attorney General v. Google LLC*, No. CV 2020-
6 006219 (Ariz. Superior Ct. 2020).

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

8 Google incorporates its General Objections as if set forth fully herein. Google further objects
9 to this request as vague and ambiguous as to the meaning of the phrase “all discovery,” to the extent
10 it can be interpreted to include documents that may be eventually produced by the Arizona Attorney
11 General. At the time of these responses, there has been no discovery in the matter *State of Arizona*
12 *ex rel. Mark Brnovich, Attorney General v. Google LLC*, No. CV 2020-006219 (Ariz. Superior Ct.
13 2020). However, to the extent there will be discovery in the matter, Google further objects to this
14 request as overly broad and unduly burdensome because the request is not limited in scope and
15 encompasses matters that have no relation to Plaintiffs’ central allegations regarding private
16 browsing mode. As worded, this request is improper and in violation of Federal Rule of Civil
17 Procedure 34(b)(1)(A), which requires that the propounding party “describe with reasonable
18 particularity each item or category of items to be inspected.” Plaintiffs’ request for cloned discovery
19 is highly likely to encompass documents that are both irrelevant and immaterial to the claims and
20 defenses in this case. Google would have to review any cloned discovery and determine whether
21 there are any additional privilege or confidentiality issues in producing them to private plaintiffs (as
22 opposed to government agencies). The request is not proportional to the needs of the case, and the
23 burden of the proposed discovery outweighs any likely benefit. For these reasons, Google will not
24 produce documents in response to this request.

REQUEST FOR PRODUCTION NO. 3:

26 Documents concerning the purpose and function of Incognito mode.
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CONFIDENTIAL**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

Google incorporates its General Objections as if set forth fully herein. Google further objects to this request as vague and ambiguous as to the meaning of the phrase “function of Incognito mode,” which is neither self-evident nor defined. For purposes of responding to this request, Google assumes that “Incognito mode” means Google Chrome’s Incognito private browsing mode and that the “function” of Incognito mode is synonymous with the purpose of Incognito mode. Google further objects to this request as overly broad and unduly burdensome because the request is not limited in scope. Incognito mode has many different aspects that have nothing to do with the central allegation in this case—namely, the purportedly unauthorized collection of certain browsing activity data by Google Analytics and Google Ad Manager while Plaintiffs were visiting certain websites in private browsing mode while signed out of their Google Account. Further, Google discloses information about Chrome’s Incognito mode, including its purpose, in various publicly-available sources, such as within Chrome itself upon opening Incognito mode, the Google Chrome Help Center, and the Google Chrome Privacy Notice. Therefore, Plaintiffs can obtain certain responsive information from publicly-available sources. For these reasons, the request is not proportional to the needs of the case, and the burden of the proposed discovery outweighs any likely benefit.

Subject to and without waiving the foregoing objections, Google responds as follows: Google will produce non-privileged, non-work product, responsive documents sufficient to show the purpose of Chrome’s Incognito mode, to the extent that such documents exist, are within Google’s possession, custody, or control, and can be located following a reasonable search.

REQUEST FOR PRODUCTION NO. 4:

Documents concerning Google’s disclosures and statements regarding Incognito mode.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Google incorporates its General Objections as if set forth fully herein. Google further objects to this request as vague and ambiguous as to the meaning of the phrase “disclosures and statements regarding Incognito mode,” which is neither self-evident nor defined. For example, Plaintiffs do not specify whether this request seeks public disclosures and statements or otherwise. For purposes of responding to this request, Google assumes that “Incognito mode” means Google Chrome’s

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1 Incognito private browsing mode and that “disclosures and statements” means public-facing
2 statements by Google. Google further objects to this request as overly broad and unduly burdensome
3 because the request is not limited in scope, and seeks all documents “regarding” Incognito mode.
4 Incognito mode has many different aspects that have nothing to do with the central allegation in this
5 case—namely, the purportedly unauthorized collection of certain browsing activity data by Google
6 Analytics and Google Ad Manager while Plaintiffs were visiting certain websites in private
7 browsing mode and signed out of their Google Account. Further, Google’s disclosures and
8 statements regarding Chrome’s Incognito mode can be found in various publicly-available sources,
9 such as within Chrome itself upon opening Incognito mode, the Google Chrome Help Center, and
10 the Google Chrome Privacy Notice. Therefore, Plaintiffs can obtain certain responsive information
11 from publicly-available sources. For these reasons, the request is not proportional to the needs of
12 the case, and the burden of the proposed discovery outweighs any likely benefit.

13 Subject to and without waiving the foregoing objections, Google responds as follows:
14 Google will produce public disclosures or statements made by Google regarding Chrome’s
15 Incognito mode from June 1, 2016 to the present, to the extent that such documents exist, are within
16 Google’s possession, custody, or control, and can be located following a reasonable search.

REQUEST FOR PRODUCTION NO. 5:

18 Documents concerning any Google disclosures and statements regarding Google’s receipt
19 of data while users are in a private browsing mode, including Incognito mode.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

21 Google incorporates its General Objections as if set forth fully herein. Google further objects
22 to this request as vague and ambiguous as to the meaning of the phrase “disclosures and statements.”
23 For example, Plaintiffs do not specify whether this request seeks public disclosures and statements
24 or otherwise. For purposes of responding to this request, Google assumes that “disclosures and
25 statements” means public-facing statements by Google. Google further objects to the phrase
26 “Google’s receipt of data” because Plaintiffs do not clarify what kind of “data” and which “Google”
27 product this request concerns. Therefore, Google assumes that this request seeks documents related
28 to the public disclosures related to Plaintiffs’ central allegation in this case—the collection of certain

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1 browsing activity data by Google Analytics and Google Ad Manager while Plaintiffs were visiting
2 certain websites in private browsing mode while signed out of their Google Account. Google's
3 disclosures and statements regarding Google's receipt of data can be found in various publicly-
4 available sources, such as Google's Privacy Policy and Google Analytics Help Center, and for
5 Chrome Incognito, the Google Chrome Privacy Notice. Archived versions of past Privacy Policies
6 and Chrome Privacy Notices are also public. Therefore, Plaintiffs can obtain responsive information
7 from publicly-available sources. For these reasons, the request is not proportional to the needs of
8 the case, and the burden of the proposed discovery outweighs any likely benefit.

9 Subject to and without waiving the foregoing objections, Google responds as follows:
10 Google will produce public disclosures or statements made by Google regarding Google Analytics'
11 and Google Ad Manager's receipt of data while users are in a private browsing mode from June 1,
12 2016 to the present, to the extent that such documents exist, are within Google's possession, custody,
13 or control, and can be located following a reasonable search.

REQUEST FOR PRODUCTION NO. 6:

14 Documents Google contends evidence or indicate consent to the Google conduct at issue.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

15 Google incorporates its General Objections as if set forth fully herein. Google further objects
16 to this request as vague and ambiguous as to the meaning of "Google conduct at issue," which is
17 neither self-evident nor defined. For purposes of responding to this request, Google assumes that
18 the "conduct at issue" refers to the allegation in the First Amended Complaint that Google Analytics
19 and Google Ad Manager purportedly collected, without authorization, certain browsing activity data
20 while Plaintiffs were browsing certain websites in private browsing mode while signed out of their
21 Google Account. Google clearly discloses to users, including Plaintiffs, its data collection practices
22 in its past and current Privacy Policies as well as in other public disclosures. Therefore, Plaintiffs
23 can obtain certain responsive information from publicly-available sources. Google further objects
24 insofar as this request seeks documents related to Plaintiffs' consent, many of which are in Plaintiffs'
25 possession, custody, or control. For these reasons, the request is not proportional to the needs of the
26 case, and the burden of the proposed discovery outweighs any likely benefit. Likewise, Google
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1 objects to the request as premature to the extent that it seeks documents supporting Google's
2 "conten[tions]" before Google has had the opportunity to conduct full discovery.

3 Subject to and without waiving the foregoing objections, Google responds as follows:
4 Google will produce non-privileged, non-work product, responsive documents showing that users
5 accepted, acknowledged, agreed to, or consented to Google Analytics' and Google Ad Manager's
6 purported collection of certain data while Plaintiffs were browsing certain websites in private
7 browsing mode while signed out of their Google Account, to the extent that such documents exist,
8 are within Google's possession, custody, or control, and can be located following a reasonable
9 search.

REQUEST FOR PRODUCTION NO. 7:

11 Documents sufficient to show all the ways in which Google collects data while users are in
12 a private browsing mode, including Incognito mode.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

14 Google incorporates its General Objections as if set forth fully herein. Google further objects
15 to this request as vague and ambiguous as to the meaning of the phrase "all the ways in which
16 Google collects data," which is neither self-evident nor defined. For purposes of responding to this
17 request, Google assumes that "all the ways in which Google collects data" means the ways by which
18 Google Analytics and Google Ad Manager purportedly collect certain browsing activity data while
19 Plaintiffs visit certain websites in private browsing mode. Google clearly discloses to users,
20 including Plaintiffs, its data collection practices in its Privacy Policies (both past and current) as
21 well as in other public disclosures. Further, Google Analytics and Google Ad Manager also disclose
22 to websites that use those services the ways in which user browsing information is collected. To the
23 extent that this request seeks the privacy policies of the websites that use Google Analytics and
24 Google Ad Manager, those policies are public and readily available to Plaintiffs. Therefore,
25 Plaintiffs can obtain certain responsive information from publicly-available sources. For these
26 reasons, the request is not proportional to the needs of the case, and the burden of the proposed
27 discovery outweighs any likely benefit.

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1 Subject to and without waiving the foregoing objections, Google responds as follows:
2 Google will produce non-privileged, non-work product, responsive documents sufficient to show
3 the ways in which Google Analytics and Google Ad Manager collect browsing information while
4 users are using a private browsing mode from June 1, 2016 to the present, to the extent that such
5 documents exist, are within Google's possession, custody, or control, and can be located following
6 a reasonable search.

REQUEST FOR PRODUCTION NO. 8:

8 Documents sufficient to identify all data Google collects while users are in a private
9 browsing mode, including Incognito mode.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

11 Google incorporates its General Objections as if set forth fully herein. Google further objects
12 to this request as vague and ambiguous as to the meaning of the phrase "identify all data Google
13 collects," which is neither self-evident nor defined. For purposes of responding to this request,
14 Google assumes that "identify all data Google collects" means the category or type of browsing
15 activity data that Google Analytics and Google Ad Manager purportedly collect while users browse
16 in private browsing mode. Google assumes that Plaintiffs are not requesting individual user-level
17 data. Google clearly discloses to users, including Plaintiffs, its data collection practices, including
18 the category or type of data Google collects, in its past and current Privacy Policies as well as in
19 other public disclosures. Therefore, Plaintiffs can obtain certain responsive information from
20 publicly-available sources. For these reasons, the request is not proportional to the needs of the case,
21 and the burden of the proposed discovery outweighs any likely benefit.

22 Subject to and without waiving the foregoing objections, Google responds as follows:
23 Google will produce non-privileged, non-work product, responsive documents sufficient to identify
24 the types of data Google Analytics and Google Ad Manager collected while users were using a
25 private browsing mode from June 1, 2016 to the present, to the extent that such documents exist, are
26 within Google's possession, custody, or control, and can be located following a reasonable search.

CONFIDENTIAL**REQUEST FOR PRODUCTION NO. 9:**

Documents sufficient to show all the ways in which Google uses data collected while users are in a private browsing mode, including Incognito mode.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Google incorporates its General Objections as if set forth fully herein. Google further objects to this request as vague and ambiguous as to the meaning of the phrases “ways in which Google uses” and “data collected while users are in a private browsing mode,” which are neither self-evident nor defined. For purposes of responding to this request, Google assumes that Plaintiffs seek documents sufficient to show whether and how Google Analytics and Google Ad Manager use the browsing activity data purportedly obtained without Plaintiffs’ agreement while Plaintiffs were visiting certain websites in private browsing mode. Google clearly discloses to users, including Plaintiffs, its data collection and use practices in its past and current Privacy Policies as well as in other public disclosures. Therefore, Plaintiffs can obtain responsive information from publicly-available sources. For these reasons, the request is not proportional to the needs of the case, and the burden of the proposed discovery outweighs any likely benefit.

Subject to and without waiving the foregoing objections, Google responds as follows: Google will produce non-privileged, non-work product, responsive documents sufficient to show how Google Analytics and Google Ad Manager may use data those services collect while users are using a private browsing mode from June 1, 2016 to the present, to the extent that such documents exist, are within Google’s possession, custody, or control, and can be located following a reasonable search.

REQUEST FOR PRODUCTION NO. 10:

Documents sufficient to identify all alleged class members, including all electronic or physical address information associated with alleged class members.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Google incorporates its General Objections as if set forth fully herein. Google further objects to this request because it seeks the identity of “alleged class members,” which, as described in the First Amended Complaint, is not ascertainable. With certain limited exclusions, the Amended

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1 Complaint defines the class members (at ¶192) as consisting of “[a]ll individuals with either a
2 Google account who accessed a website containing Google Analytics or Google Ad Manager using
3 any non-Android device” or “Android device owners who “accessed a website containing Google
4 Analytics or Google Ad Manager using such device,” “who were (a) in ‘private browsing mode’ in
5 that device’s browser, and (b) were not logged into their Google account on that device’s browser.”
6 However, Google does not associate Google Account holders’ electronic or physical address
7 information with their logged-out browsing activities. Neither Google Analytics nor Google Ad
8 Manager differentiates between data collected while a user was using private browsing mode or not.
9 As such, Google does not maintain documents or data in the ordinary course of business that would
10 allow it to “identify all alleged class members,” which are limited to users in private browsing mode
11 who were not logged into their Google Account. Google further objects to this request because it
12 seeks highly sensitive and personal information not relevant to establishing any party’s claim or
13 defense. *See In re Williams-Sonoma, Inc.*, 947 F.3d 535, 539-40 (9th Cir. 2020) (holding that
14 pursuant to the Supreme Court’s decision in *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 350–
15 53, 98 S. Ct. 2380, 2389–90 (1978), “seeking discovery of the name of a class member... is not
16 relevant within the meaning of [Rule 26(b)(1)], and it is even less relevant where no class has been
17 certified”). Class certification has not been granted in this case, and seeking this information now is
18 premature. For these reasons, Google will not produce documents in response to this request.

REQUEST FOR PRODUCTION NO. 11:

20 Documents sufficient to identify Google’s current and former officers, directors, managers,
21 employees and consultants with knowledge of the alleged Google conduct.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

23 Google incorporates its General Objections as if set forth fully herein. Google further objects
24 to this request as vague and ambiguous as to the meaning of the phrase “knowledge of the alleged
25 Google conduct,” which is neither self-evident nor defined. First, Google denies that the impropriety
26 alleged in the First Amended Complaint—unauthorized collection of private data —occurred at all.
27 Second, to the extent that this request refers instead to knowledge of certain basic facts alleged in
28 the First Amended Complaint, it is unclear whether Plaintiffs seek identification of any individual

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1 with any level of “knowledge,” however small. This exercise would be burdensome and not
2 proportional to the needs of the case. Third, if this request refers to all alleged Google conduct in
3 the First Amended Complaint, which is 69 pages long and describes and alleges a myriad of facts
4 that have no relationship to the purported violations Plaintiffs seek to remedy, Google objects to this
5 request as overly broad and unduly burdensome. That a set of individuals may have “knowledge,”
6 however that is defined, of a matter alleged in the First Amended Complaint is not sufficient ground
7 to impose such a burden on Google. Google further objects because Plaintiffs’ definition of
8 “identify” (encompassing address, phone number, etc.) makes this request unduly burdensome and
9 overly broad. For these reasons, the request is not proportional to the needs of the case, and the
10 burden of the proposed discovery outweighs any likely benefit.

11 Subject to and without waiving the foregoing objections, Google responds as follows:
12 Google will produce non-privileged, non-work product, responsive documents sufficient to identify
13 current Google personnel with responsibility for the relevant conduct relating to Google Chrome,
14 Google Analytics, and Google Ad Manager, to the extent that such documents exist, are within
15 Google’s possession, custody, or control, and can be located following a reasonable search.

REQUEST FOR PRODUCTION NO. 12:

17 Documents sufficient to show the roles and responsibilities of and supervisory relationship
18 between Google’s current and former officers, directors, managers, employees and consultants with
19 knowledge of the alleged Google conduct.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

21 Google incorporates its General Objections as if set forth fully herein. Google further objects
22 to this request as vague and ambiguous as to the meaning of the phrase “knowledge of the alleged
23 Google conduct,” which is neither self-evident nor defined. First, Google denies that the impropriety
24 alleged in the First Amended Complaint—unauthorized collection of private data—occurred at all.
25 Second, to the extent that this request refers instead to knowledge of certain basic facts alleged in
26 the First Amended Complaint, it is unclear whether Plaintiffs seek identification of any individual
27 with any level of “knowledge,” however small. This exercise would be burdensome and not
28 proportional to the needs of the case. Third, if this request refers to all alleged Google conduct in

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1 the First Amended Complaint, which is 69 pages long and describes and alleges a myriad of facts
2 that have no relationship to the purported violations Plaintiffs seek to remedy, Google objects to this
3 request as overly broad and unduly burdensome. That a set of individuals may have “knowledge,”
4 however that is defined, of a matter alleged in the First Amended Complaint is not sufficient ground
5 to impose such a burden on Google. For these reasons, the request is not proportional to the needs
6 of the case, and the burden of the proposed discovery outweighs any likely benefit.

7 Subject to and without waiving the foregoing objections, Google responds as follows:
8 Google will produce non-privileged, non-work product, responsive documents sufficient to show
9 the roles of current Google personnel with responsibility for the relevant conduct relating to Google
10 Chrome, Google Analytics, and Google Ad Manager, to the extent that such documents exist, are
11 within Google’s possession, custody, or control, and can be located following a reasonable search.

REQUEST FOR PRODUCTION NO. 13:

13 Handouts and presentations to or from any Google C-level executive or board member and
14 committee or board meeting minutes discussing any private browsing mode, including Incognito
15 mode.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

17 Google incorporates its General Objections as if set forth fully herein. Google further objects
18 to this request as vague and ambiguous as to the meaning of the phrase “Google C-level executive,”
19 which is neither self-evident nor defined. Google further objects to this request as overly broad and
20 unduly burdensome because the request is not limited in scope. Private browsing modes have many
21 different aspects that have nothing to do with the central allegations in this case—namely, Google
22 Analytics’ and Google Ad Manager’s purportedly unauthorized collection of certain browsing
23 activity data while Plaintiffs were browsing certain websites in private browsing mode while signed
24 out of their Google Account. Google further objects to this request to the extent it seeks information
25 protected from discovery by the attorney-client privilege, work-product doctrine, the common-
26 interest privilege, or any other privilege or immunity. Google further objects to this request as
27 overbroad because it seeks information regarding “any private browsing mode” for any browser,
28 even those which no Plaintiff has alleged he or she used to browse privately. Thus, the request is

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1 not proportional to the needs of the case, and the burden of the proposed discovery outweighs any
2 likely benefit. For these reasons, Google will not produce documents in response to this request.

REQUEST FOR PRODUCTION NO. 14:

3
4 Documents concerning Google's December 2008 launch of Incognito mode, including
5 Google's reasons for launching Incognito mode, Google's anticipated benefits from Incognito
6 mode, Google's disclosures in connection with the launch of Incognito mode, and Google's data
7 collection practices in connection with launching Incognito mode.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

8
9 Google incorporates its General Objections as if set forth fully herein. Google further objects
10 to this request as vague and ambiguous as to the meaning of the phrases "anticipated benefits from
11 Incognito mode," "disclosures in connection with the launch of Incognito mode," and "data
12 collection practices in connection with launching Incognito mode," which are neither self-evident
13 nor defined. For purposes of responding to this request, Google assumes that "Incognito mode"
14 means Google Chrome's Incognito private browsing mode. Google further objects to this request as
15 overly broad and unduly burdensome because the request is not limited in scope, and seeks all
16 documents "concerning" Incognito mode. Incognito mode has many different aspects that have
17 nothing to do with the central allegations in this case—namely, the purportedly unauthorized
18 collection of certain browsing activity data by Google Analytics and Google Ad Manager while
19 Plaintiffs were visiting certain websites in private browsing mode and signed out of their Google
20 Account. Google also objects to this request to the extent it is designed to seek information protected
21 from discovery by the attorney-client privilege, work-product doctrine, the common-interest
22 privilege, or any other privilege or immunity. Google further objects to this request because seeking
23 documents related to the "December 2008 launch," almost 8 years before the Class Period (i.e., June
24 1, 2016), is not proportional to the needs of the case. Plaintiffs' allegations of purportedly
25 unauthorized collection are limited (at best) to June 1, 2016 to the present. The data collection
26 practices of 2008 are irrelevant to the claims and defenses in this action; therefore, the likelihood of
27 obtaining responsive information from the 2008 period, if any, outweighs the burden of providing
28 it.

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1 Subject to and without waiving the foregoing objections, Google responds as follows:
2 Google is willing to meet and confer with Plaintiffs on the relevance of the information sought and
3 to appropriately narrow the scope of this request.

REQUEST FOR PRODUCTION NO. 15:

5 Documents concerning the launch of private browsing modes for Safari (2005), Internet
6 Explorer (2009), Mozilla Firefox (2009), Opera (2010), Amazon Silk (2014), Microsoft Edge
7 (2015), and Brave (2019), including any changes to Google's disclosures and data collection
8 practices in connection with those private browsing modes.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

10 Google incorporates its General Objections as if set forth fully herein. Google objects to this
11 request as vague and ambiguous as to the meaning of the phrase "Google's disclosures and data
12 collection practices," which is neither self-evident nor defined. Google further objects to this request
13 as overly broad and unduly burdensome because the request is not limited in scope, and seeks all
14 documents "concerning" the "launch of [various] private browsing modes" related to browsers
15 owned by third parties and that Google does not control. To the extent documents about the launch
16 of third party browsers are relevant (they are not), these documents are unlikely to be in Google's
17 possession, custody, or control. Google objects to this request to the extent it seeks information
18 protected from discovery by the attorney-client privilege, work-product doctrine, the common-
19 interest privilege, or any other privilege or immunity. Google further objects to this request as overly
20 broad and unduly burdensome in seeking documents concerning events that occurred as early as
21 2005, eleven years before the June 1, 2016 start of the Class Period. Moreover, this request seeks
22 information regarding web browsers that no plaintiff has alleged he or she has used (including
23 Internet Explorer, Mozilla Firefox, Opera, Amazon Silk, and Brave). Google further objects to this
24 request as overly broad and unduly burden in seeking *any* changes "to Google's disclosures and data
25 collection practices in connection with those private browsing modes" since changes to Google's
26 disclosures or practices years before the start of the Class Period have no relevance to Plaintiffs'
27 claims that Google made certain promises during the relevant time period and breached those
28 promises. Thus, the request is not proportional to the needs of the case, and the burden of the

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1 proposed discovery outweighs any likely benefit. For these reasons, Google will not produce
2 documents in response to this request.

REQUEST FOR PRODUCTION NO. 16:

4 Documents concerning each change Google has made, is making, has considered or is
5 considering with respect to its privacy and data-collection disclosures and practices in connection
6 with any private browsing mode, including Incognito mode, and Google's reason(s) for each change.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

8 Google incorporates its General Objections as if set forth fully herein. Google further objects
9 to this request as vague and ambiguous as to the meaning of the phrase "has considered or is
10 considering," which doesn't clarify whether it is limited to formal consideration given to policy
11 changes or whether it would encompass even informal discussions about changes considered, which
12 would be impossible to capture and would increase the burden. Google also objects to the phrase
13 "privacy and data-collection disclosures and practices" as vague and ambiguous, as it could refer to
14 documents other than formal policies related to privacy. For purposes of responding to this request,
15 Google will assume that by "privacy and data-collection disclosures and practices" Plaintiffs mean
16 to refer to Google's Privacy Policy and the Google Chrome Privacy Notice. Even this clarification
17 does not lessen the burden in responding to this request, since the request appears to be designed to
18 seek information protected from discovery by the attorney-client privilege, work-product doctrine,
19 the common-interest privilege, or any other privilege or immunity. Google's past and present
20 Privacy Policies and Chrome Privacy Notices are publicly available, including clear comparisons
21 among the Privacy Policies that reflect changes made. Therefore, Plaintiffs can obtain the
22 information they seek from publicly-available sources. For these reasons, the request is not
23 proportional to the needs of the case, and the burden of the proposed discovery outweighs any likely
24 benefit.

25 Subject to and without waiving the foregoing objections, Google responds as follows:
26 Google is willing to meet and confer with Plaintiffs on the relevance of the information sought and
27 to appropriately narrow the scope of this request.

28

CONFIDENTIAL**REQUEST FOR PRODUCTION NO. 17:**

Documents discussing, analyzing, or evaluating any of the rights and claims asserted in this lawsuit.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Google incorporates its General Objections as if set forth fully herein. Google further objects to this request as vague and ambiguous as to the meaning of the phrase “rights and claims asserted in this lawsuit,” which is neither self-evident nor defined. For purposes of responding to this request, Google assumes that “rights and claims asserted in this lawsuit” means the claims asserted in the First Amended Complaint arising from Google Analytics’ and Google Ad Manager’s purported collection, without authorization, of certain data while Plaintiffs were browsing certain websites in private browsing mode, for which Plaintiffs seek relief. Google further objects to this request because it appears to be designed to seek information protected from discovery by the attorney-client privilege, work-product doctrine, the common-interest privilege, or any other privilege or immunity. The request is not proportional to the needs of the case, and the burden of the proposed discovery outweighs any likely benefit. For these reasons, Google will not produce documents in response to this request.

REQUEST FOR PRODUCTION NO. 18:

Documents concerning Plaintiffs, including Plaintiffs’ use of Google services, all data collected by Google from and regarding Plaintiffs, and Google’s use of all data collected by Google from and regarding Plaintiffs.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Google incorporates its General Objections as if set forth fully herein. Google further objects to this request as vague and ambiguous, and potentially overbroad, as to the meaning of the phrases “Plaintiffs’ use of Google services,” without defining which services, and “all data collected by Google from and regarding Plaintiffs,” without defining the type of data or the Google service allegedly collecting the data. To the extent Plaintiffs seek all data related to their browsing activity, however attenuated the relationship to the Google services at issue in this case, the request is not proportional to the needs of the case, and the burden of the proposed discovery outweighs any likely

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1 benefit. In any event, Google is unable to identify, preserve, or collect the relevant data for the
2 Plaintiffs in the absence of Google Account IDs (e.g. Gmail address), which Plaintiffs have not
3 provided.

4 Subject to and without waiving the foregoing objections, Google responds as follows:
5 Google is willing to preserve and collect data associated with Plaintiffs' Google Accounts and
6 Google Account IDs. Google agrees to produce such data, subject to Plaintiffs identifying what
7 relevant information they are seeking. Google is prepared to meet and confer with Plaintiffs on any
8 related information sought to appropriately narrow the scope of this request.

9 **REQUEST FOR PRODUCTION NO. 19:**

10 Documents sufficient to show Google's past and present policy(ies) or practice(s)
11 concerning the retention or destruction of Documents, including Documents concerning Google's
12 collection of data while users are in a private browsing mode, use of such data, and identification of
13 class members.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

15 Google incorporates its General Objections as if set forth fully herein. Google objects to this
16 request as vague and ambiguous as to the meaning of the phrase "concerning Google's collection of
17 data," which is neither self-evident nor defined. For purposes of responding to this request, Google
18 assumes that "Google's collection of data" means the category or type of browsing activity data that
19 Google Analytics and Google Ad Manager purportedly collected while users browse in private
20 browsing mode. Google further objects to this request because Google's document retention and
21 destruction policies and/or practices are not relevant to Plaintiffs' central allegation that Google
22 collects data while users are using private browsing mode from June 1, 2016 to the present. Thus,
23 the request is not proportional to the needs of the case, and the burden of the proposed discovery
24 outweighs any likely benefit. For these reasons, Google will not produce documents in response to
25 this request.

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1 DATED: October 30, 2020

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25 *Attorneys for Defendant Google LLC*
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27
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 50 California St., 22nd Floor, San Francisco, CA 94111.

On October 30, 2020, I served true copies of the following document(s) described as **DEFENDANT'S RESPONSES AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION (NOS. 1-19)** on the interested parties in this action as follows:

SEE ATTACHED LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I transmitted PDF format copies of the document(s) described above to the e-mail addresses on the attached Service List pursuant to the agreement between the parties to serve discovery, in lieu of other service methods, by email under Fed. R. Civ. P. 5(b)(2)(E) (*see* Joint Case Management Statement § 8.b, Docket No. 44). The documents were transmitted by electronic transmission and such transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 30, 2020 at San Francisco, California.

/s/ Jonathan Tse

Jonathan Tse

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SERVICE LIST

Brown v. Google LLC

Case No. 5:20-cv-03664-LHK

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